

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 107

91ST GENERAL ASSEMBLY

0162S.05T

2001

AN ACT

To repeal section 537.675, RSMo 2000, relating to judicial and administrative procedures, and to enact in lieu thereof nine new sections relating to the same subject.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 537.675, RSMo 2000, is repealed and nine new sections enacted in lieu thereof, to be known as sections 476.777, 488.636, 537.675, 537.678, 537.681, 537.684, 537.687, 537.690 and 537.693, to read as follows:

476.777. 1. There is hereby established in the state treasury a special fund, to be known as the "Missouri CASA Fund". The state treasurer shall credit to and deposit in the Missouri CASA fund all moneys which may be appropriated to it by the general assembly and also any gifts, contributions, grants, bequests or other aid received from federal, private or other sources, in addition to any moneys deposited pursuant to section 488.636. The general assembly may appropriate moneys into the fund to support the court-appointed special advocate (CASA) program throughout the state.

2. The state treasurer shall invest moneys in the Missouri CASA fund in the same manner as surplus state funds are invested pursuant to section 30.260, RSMo. All earnings resulting from the investment of moneys in the fund shall be credited to the Missouri CASA fund.

3. The state courts administrator shall administer and disburse moneys in the Missouri CASA fund based on the following requirements:

(1) The office of state courts administrator shall set aside funding for new start-up

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

15 **CASA programs throughout the state;**

16 **(2) Every recognized CASA program shall receive a base rate allocation, with**
17 **availability of additional funding based on the number of children with abuse or neglect**
18 **cases under the jurisdiction of the court; and**

19 **(3) All CASA programs being considered for funding shall be recognized by and**
20 **affiliated with the state and national CASA associations.**

21 **4. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, moneys**
22 **in the Missouri CASA fund shall not revert to the credit of the general revenue fund at the**
23 **end of the biennium.**

488.636. In addition to all other court costs for domestic relations cases, the circuit
2 **clerk shall collect an additional surcharge in the amount of two dollars per case for each**
3 **domestic relations petition filed before a circuit judge or associate circuit judge. Such**
4 **surcharges collected by circuit court clerks shall be collected and disbursed as provided**
5 **by sections 488.010 to 488.020. Such fees shall be payable to the state treasurer, to be**
6 **deposited into the Missouri CASA fund.**

537.675. 1. As used in sections 537.675 through 537.693, the following terms mean:

2 **(1) "Annual claims", that period of time commencing on the first day of January**
3 **of every year after December 31, 2002, and ending on the last day of that calendar year;**

4 **(2) "Commission", the labor and industrial relations commission;**

5 **(3) "Division", the division of workers' compensation;**

6 **(4) "Initial claims period", that period commencing on August 28, 2001, and ending**
7 **on December 31, 2002;**

8 **(5) "Punitive damage final judgment", an award for punitive damages excluding**
9 **interest that is no longer subject to review by courts of this state or of the United States;**

10 **(6) "Uncompensated tort victim", a person who:**

11 **(a) Is a party in a personal injury or wrongful death lawsuit; or is a tort victim**
12 **whose claim against the tortfeasor has been settled for the policy limits of insurance**
13 **covering the liability of such tortfeasor and such policy limits are inadequate in light of the**
14 **nature and extent of damages due to the personal injury or wrongful death;**

15 **(b) Unless described in paragraph (a) of this subdivision:**

16 **a. Has obtained a final monetary judgment in that lawsuit described in paragraph**
17 **(a) of this subdivision against a tortfeasor for personal injuries, or wrongful death in a case**
18 **in which all appeals are final;**

19 **b. Has exercised due diligence in enforcing the judgment; and**

20 **c. Has not collected the full amount of the judgment;**

21 **(c) Is not a corporation, company, partnership or other incorporated or**

22 **unincorporated commercial entity;**

23 **(d) Is not any entity claiming a right of subrogation;**

24 **(e) Was not on house arrest and was not confined in any federal, state, regional,**
25 **county or municipal jail, prison or other correctional facility at the time he or she sustained**
26 **injury from the tortfeasor;**

27 **(f) Has not pleaded guilty to or been found guilty of two or more felonies, where**
28 **such two or more felonies occurred within ten years of the occurrence of the tort in**
29 **question, and where either of such felonies involved a controlled substance or an act of**
30 **violence; and**

31 **(g) Is a resident of the state of Missouri or sustained personal injury or death by**
32 **a tort which occurred in the state of Missouri.**

33 **2. There is created the "Tort Victims' Compensation Fund". Unexpended moneys in the**
34 **fund shall not lapse at the end of the biennium as provided in section 33.080, RSMo.**

35 **[2. Fifty percent of any final judgment awarding punitive damages after the deduction**
36 **of attorneys' fees and expenses shall be deemed rendered in favor of the state of Missouri. The**
37 **circuit clerks shall notify the attorney general of any final judgment awarding punitive damages**
38 **rendered in their circuits. With respect to such fifty percent, the attorney general shall collect**
39 **upon such judgment, and may execute or make settlements with respect thereto as he deems**
40 **appropriate for deposit into the fund.]**

41 **3. Any party receiving a judgment final for purposes of appeal for punitive**
42 **damages in any case filed in any division of any circuit court of the state of Missouri shall**
43 **notify the attorney general of the state of Missouri of such award, except for actions**
44 **claiming improper health care pursuant to chapter 538, RSMo. The state of Missouri shall**
45 **have a lien for deposit into the tort victims' compensation fund to the extent of fifty percent**
46 **of the punitive damage final judgment which shall attach in any such case after deducting**
47 **attorney's fees and expenses. In each case, the attorney general shall serve a lien notice by**
48 **certified mail or registered mail upon the party or parties against whom the state has a**
49 **claim for collection of its share of a punitive damage final judgment. On a petition filed**
50 **by the state, the court, on written notice to all interested parties, shall adjudicate the rights**
51 **of the parties and enforce the lien. The lien shall not be satisfied out of any recovery until**
52 **the attorney's claim for fees and expenses is paid. The state can file its lien in all cases**
53 **where punitive damages are awarded upon the entry of the judgment final for purposes**
54 **of appeal. The state cannot enforce its lien until there is a punitive damage final judgment.**
55 **Cases resolved by arbitration, mediation or compromise settlement prior to a punitive**
56 **damage final judgment are exempt from the provisions of this section. Nothing in this**
57 **section shall hinder or in any way affect the right or ability of the parties to any claim or**

58 lawsuit to compromise or settle such claim or litigation on any terms and at any time the
59 parties desire.

60 [3.] 4. The state of Missouri shall have no interest in or right to intervene at any stage
61 of any judicial proceeding [under] pursuant to this section, except to enforce its lien rights as
62 provided in subsection 3 of this section.

63 [4. No disbursement shall be made from the tort victims' compensation fund until
64 procedures for disbursement are established by further action of the general assembly.]

65 5. There is hereby established in the state treasury the "Legal Services for Low-
66 Income People Fund", which shall consist of twenty-six percent of all payments received
67 into the tort victims' compensation fund and all interest accruing on the principal,
68 regardless of source or designation including twenty-six percent of the money that upon
69 the effective date of this act is in the tort victims' compensation fund. Moneys, funds or
70 payments paid to the credit of the legal services for low-income people fund shall, at least
71 as often as annually, upon appropriation, be distributed to the legal services organizations
72 in Missouri which are recipients of federal Legal Services Corporation funding and shall
73 be used for no other purpose than as authorized pursuant to sections 537.675 to 537.693.
74 The funds so distributed shall be used by legal services organizations in Missouri solely to
75 provide legal services to its low-income population. Funds shall be allocated according to
76 the most recent official census data from the Bureau of Census, United States Department
77 of Commerce for people in poverty residing in Missouri. Notwithstanding the provisions
78 of section 33.080, RSMo, any balance remaining in the legal services for low-income people
79 fund at the end of any biennium shall not be transferred to general revenue, but shall
80 remain in the fund and be distributed in accordance with the provisions of this section.
81 Moneys in the tort victims' compensation fund shall not be used to pay any portion of a
82 refund mandated by article X, section 18 of the constitution.

537.678. 1. Seventy-four percent of all payments received by the tort victims'
2 compensation fund regardless of source or designation shall, upon appropriation, be
3 appropriated to the division of workers' compensation to assist uncompensated tort victims
4 and shall be used for no other purpose. Notwithstanding the provisions of section 33.080,
5 RSMo, any balance remaining in the budget of the division of workers' compensation for
6 compensation of uncompensated tort victims shall not be transferred to general revenue
7 but shall remain in the fund. Moneys in the tort victims' compensation fund shall not be
8 used to pay any portion of a refund mandated by article X, section 18 of the constitution.

9 2. The division of workers' compensation shall, pursuant to the provisions of
10 sections 537.678 to 537.693, have jurisdiction to determine and award compensation to or
11 on behalf of uncompensated tort victims. The requirement that the uncompensated tort

12 victim has obtained a final judgment may be waived by the division based upon the
13 tortfeasor's bankruptcy, inability to identify the tortfeasor or inability to obtain service of
14 process on the tortfeasor after making a good faith effort to do so or the claim against
15 tortfeasor has been settled for the insurance policy limits available to cover the liability of
16 such tortfeasor and such policy limits are inadequate in light of the injury suffered by the
17 tort victim. The division is not required to award compensation, nor is it required to
18 award the full amount claimed. The division shall base its award of compensation upon
19 independent verification obtained during its investigation. In no case shall the amount
20 paid to the individual exceed the lesser of either the net award granted by the court or jury,
21 or the amount remaining in the tort victims' compensation fund, provided, however, that
22 no award shall exceed three hundred thousand dollars.

23 **3. Claims shall be made by filing an application for compensation with the division.**
24 **The division shall furnish an application form which shall include:**

25 (1) The name and address of the uncompensated tort victim;

26 (2) If the claimant is not the uncompensated tort victim, the name and address of
27 the claimant and relationship to the victim, the name and address of any dependents of the
28 victim, and the extent to which each is so dependent;

29 (3) The date and nature of the tort on which the application for compensation is
30 based;

31 (4) The date and court in which a judgment was rendered against the tortfeasor,
32 including the judgment amount specifying medical costs, if available. If no final judgment
33 was obtained and the claimant is requesting a waiver pursuant to subsection 2 of this
34 section, the application shall include a statement establishing the basis for a waiver;

35 (5) The nature and extent of the injuries sustained by the victim, the names and
36 addresses of those giving medical and hospital treatment to the victim and whether death
37 resulted;

38 (6) The loss to the claimant or a dependent resulting from the injury or death;

39 (7) The amount of benefits, payments or awards, if any, payable from any source
40 that the claimant or dependent has received or for which the claimant or dependent is
41 eligible as a result of the injury or death;

42 (8) Releases by the claimant authorizing any reports, documents and other
43 information relating to the matters specified pursuant to this section to be obtained by the
44 division; and

45 (9) Any other information as the division determines is necessary.

46 **4. In addition to the application, the division may require that the claimant submit**
47 **materials substantiating the facts stated in the application.**

48 **5. If the division finds that an application does not contain the required**
49 **information or that the facts stated therein have not been substantiated, it shall notify the**
50 **claimant in writing of the specific additional items or information or materials required**
51 **and that the claimant has thirty days from the date of mailing in which to furnish those**
52 **items to the division. Unless a claimant requests and is granted an extension of time by the**
53 **division, the division may reject, without prejudice to refiling of another application for**
54 **the same matter, the claim of the claimant for failure to file the additional information or**
55 **materials within the specified time. Extensions of time to file such additional information**
56 **shall be freely granted.**

57 **6. The claimant may file an amended application or additional substantiating**
58 **materials to correct inadvertent errors or omissions at any time before the division has**
59 **completed its consideration of the original application.**

60 **7. Any state or local agency, including a prosecuting attorney or law enforcement**
61 **agency, shall make available without cost to the fund, all reports, files and other**
62 **appropriate information that the division requests in order to make a determination that**
63 **a claimant is eligible for an award pursuant to sections 537.675 to 537.693.**

64 **8. Any notice required pursuant to sections 537.675 to 537.693, with the exception**
65 **of the lien notice required by subsection 3 of section 537.675, shall be sent by first class**
66 **mail, postage prepaid, to the party's last known address or to the last known address of the**
67 **party's attorney or other legal representative.**

537.681. 1. The following persons shall be eligible for compensation pursuant to
2 **sections 537.675 to 537.693:**

3 **(1) An uncompensated tort victim; and**

4 **(2) In the case of the death of the uncompensated tort victim as a direct result of**
5 **the tort:**

6 **(a) The class of persons identified in subsection 1 of section 537.080; and**

7 **(b) Any relative of the uncompensated tort victim who legally assumes the**
8 **obligation for, or who has incurred medical or burial expenses as a direct result of the tort**
9 **at issue.**

10 **2. An uncompensated tort victim that is found personally liable on a cross-**
11 **complaint of tort, or found to have been contributorily or comparatively negligent, shall**
12 **only be eligible to receive compensation to the extent of the favorable net amount awarded**
13 **by the judge or jury. No uncompensated tort victim or other eligible claimant shall be**
14 **denied compensation solely because such person is a relative of the tortfeasor or was living**
15 **with the tortfeasor as a family or household member at the time of the injury or death.**
16 **The division, however, may award compensation to a victim or other eligible claimant only**

17 if the division can reasonably determine that the tortfeasor will receive no substantial
18 economic benefit or unjust enrichment from the compensation.

19 3. The division may waive the requirements of paragraph (e) of subdivision (5) of
20 subsection 1 of section 537.675 if it determines that the interest of justice would be served
21 by doing so.

22 4. In the case of an uncompensated tort victim or other eligible claimant who is
23 incarcerated as a result of a conviction of a crime not related to the incident which is the
24 basis for the claimant's application:

25 (1) The division shall suspend all proceedings and payments until such time as the
26 uncompensated tort victim or other eligible claimant is released from incarceration;

27 (2) The division shall notify the claimant at the time the proceedings are suspended
28 of the right to reactivate the claim within six months of his or her release from
29 incarceration;

30 (3) The uncompensated tort victim or other eligible claimant may file an
31 application to request that the case be reactivated not later than six months after the date
32 he or she is released from incarceration. Failure to file such request within the six-month
33 period shall serve as a bar to any recovery.

 537.684. 1. A claim for compensation may be filed by a person eligible for
2 compensation or, if the person is an incapacitated or disabled person, or a minor, by the
3 person's spouse, parent, conservator or guardian.

4 2. A claim shall be filed not later than two years after the judgment upon which it
5 is based becomes final and all appeals are final, except with regard to the initial claims
6 period. If there is no judgment, claims must be filed within time limits prescribed pursuant
7 to section 516.120, RSMo, except for cases resulting in death, in which case claims must be
8 filed within time limits prescribed pursuant to section 537.100, except with regard to the
9 initial claims period. With regard to the initial claims period, any claim may be filed that
10 is based upon a judgment that is not expired or that is based upon a claim not reduced to
11 judgment for a reason allowed by subsection 2 of section 537.678, and which would not be
12 barred by the applicable statute of limitations if the tortfeasor could be served with process
13 or had not taken bankruptcy.

14 3. Each claim shall be filed in person or by mail. The division shall investigate such
15 claim prior to the opening of formal proceedings. The director of the division shall assign
16 an administrative law judge, associate administrative law judge or legal advisor within the
17 division to hear any claim for compensation filed. The claimant shall be notified of the
18 date and time of any hearing on the claim. In determining the amount of compensation for
19 which a claimant is eligible, the division shall:

- 20 (1) Consider the facts stated on the application filed pursuant to section 537.678;
21 (2) Obtain a copy of the final judgment, if any, from the appropriate court;
22 (3) Determine the amount of the loss to the claimant, or the victim's survivors or
23 dependents; and
24 (4) If there is no final judgment, determine the degree or extent to which the
25 victim's acts or conduct provoked, incited or contributed to the injuries or death of the
26 victim.
- 27 4. The claimant may present evidence and testimony on his or her own behalf or
28 may retain counsel.
- 29 5. Prior to any hearing, the person filing a claim shall submit reports, if available,
30 from all hospitals, physicians or surgeons who treated or examined the victim for the
31 injury for which compensation is sought. If, in the opinion of the division, an examination
32 of the injured victim or a report on the cause of death of the victim would be of material
33 aid, the division may appoint a duly qualified, impartial physician to make an examination
34 and report. A finding of the judge or jury in the underlying case shall be considered as
35 evidence.
- 36 6. Each and every payment shall be exempt from attachment, garnishment or any
37 other remedy available to creditors for the collection of a debt, provided however, this
38 section shall not in any way affect the right of any attorney who represents or represented
39 any claimant to collect any fee or expenses to which he or she is entitled.
- 40 7. Payments of compensation shall not be made directly to any person legally
41 incompetent to receive them but shall be made to the parent, guardian or conservator for
42 the benefit of such minor, disabled or incapacitated person.
- 43 8. Payment of all claims from the fund shall be made on the following basis, to-wit:
- 44 (1) With regard to all claims that are made during the initial claims period, the
45 division shall determine the aggregated amount of all awards made on these claims. Such
46 determination shall be made on or before June 30, 2003. If the aggregate value of the
47 awards does not exceed the total amount of money in the fund, then the awards shall be
48 paid in full on or before September 30, 2003. If the aggregate value of the awards does
49 exceed the total amount of money in the fund, then the awards shall be paid on a prorata
50 basis on or before September 30, 2003.
- 51 (2) With regard to all claims that are made after the initial claims period, the
52 division shall determine the aggregate amount of all awards made on those claims filed
53 during an annual claims period. Such determination shall be made on or before the 30th
54 day of June in the next succeeding year. If the aggregate value of the awards does not
55 exceed the total amount of money in the fund, then the awards shall be paid in full on or

56 before the 30th day of September in the next succeeding year. If the aggregate value of the
57 awards does exceed the total amount of money in the fund, then the awards shall be paid
58 on a prorata basis on or before the 30th day of September in the next succeeding year.

59 9. If there are no funds available, then no claim shall be paid until funds have
60 accumulated in the tort victims' compensation fund and have been appropriated to the
61 division for payment to uncompensated tort victims. When sufficient funds become
62 available for payment of claims of uncompensated tort victims, awards that have been
63 determined but have not been paid shall be paid in chronological order with the oldest paid
64 first, based upon the date on which the application was filed with the division. Any award
65 pursuant to this subsection that cannot be paid due to a lack of funds appropriated for
66 payment of claims of uncompensated tort victims shall not constitute a claim against the
67 state.

68 10. In the event there are no funds available for payment of claims, then the
69 division may suspend all action related to valuing claims and granting awards until such
70 time as funds in excess of one hundred thousand dollars have accumulated in the tort
71 victims' compensation fund, at which time the division shall resume its claim processing
72 duties.

537.687. 1. Upon request by the division for verification of injuries of victims, a
2 medical provider shall submit medical records and other information requested by the
3 division. Any costs to the claimant for obtaining and providing such information may be
4 submitted as part of the claim.

5 2. Failure to submit the information as required by this section shall be an
6 infraction.

537.690. 1. Any of the parties to a decision of the division on a claim heard under
2 the provisions of sections 537.675 to 537.693 may, within thirty days following the date of
3 notification or mailing of such decision, file a petition with the labor and industrial
4 relations commission to have the decision reviewed by the commission. The commission
5 may allow or deny a petition for review. If a petition is allowed, the commission may
6 affirm, reverse or set aside the decision of the division on the basis of the evidence
7 previously submitted in such case or may take additional evidence or may remand the
8 matter to the division with directions. The commission shall promptly notify the parties
9 of its decision and the reasons therefore.

10 2. Any petition for review filed pursuant to subsection 1 of this section shall be
11 deemed to be filed as of the date endorsed by the United States Postal Service on the
12 envelope or container in which such petition is received.

13 3. Any party who is aggrieved by a final decision of the commission entered

14 pursuant to the provisions of subsections 1 and 2 of this section may seek judicial review
15 thereof by appealing, within twenty days of a final decision to the appellate court having
16 jurisdiction in the area where the appellant resides. In such proceedings the attorney
17 general, on behalf of the tort victims' compensation fund, shall defend the decision of the
18 commission. The commission shall not be a party in such actions.

537.693. 1. Payment of any compensation pursuant to sections 537.675 to 537.693
2 shall vest in the state of Missouri a right of subrogation to the extent of such compensation
3 paid, to any right or right of action of the claimant to recover payments with respect to
4 which the compensation has been paid and to enforce the underlying judgment against the
5 tortfeasor. The attorney general may enforce the subrogation interest, and may file suit
6 to enforce that right of subrogation.

7 2. The division shall have a lien on any compensation received by the claimant from
8 the tortfeasor or the tortfeasor's agent after payment by the division to the claimant, in
9 addition to compensation received pursuant to the provisions of sections 537.675 to
10 537.693, for injuries or death resulting from the incident upon which the claim is based.
11 The claimant shall retain, as trustee for the division, so much of the recovered funds as
12 necessary to reimburse the Missouri tort victims' compensation fund to the extent that
13 compensation was paid to the claimant from that fund.

14 3. If a claimant initiates any legal proceeding to recover restitution or damages or
15 enforce the underlying judgment related to the tort upon which the claim is based, or if the
16 claimant enters into negotiations to receive any proceeds in settlement or a claim for
17 restitution or damages related to the tort, the claimant shall give the division written notice
18 within fifteen days of the filing of the action or entering into negotiations. The division
19 may intervene in the proceeding of a claimant to enforce its subrogation interest. If a
20 claimant fails to give such written notice to the division within the stated time period or
21 prior to any attempt by claimant to reach a negotiated settlement of claims for recovery of
22 damages related to the tort upon which the claim is based, the division's right of
23 subrogation to receive or recover funds from claimant, to the extent that compensation was
24 awarded by the division, shall not be reduced in any amount or percentage by the costs
25 incurred by claimant attributable to such legal proceedings or settlement, including, but
26 not limited to, attorney's fees, investigative costs or court costs; however, if the claimant
27 provides written notice to the division as required in this section then the subrogation
28 interest of the division shall be reduced by a percentage equal to the percentage that the
29 attorney's fees and expenses incurred by the claimant bears to the total recovery.

30 4. Whenever the division shall deem it necessary to protect, maintain or enforce the
31 division's right to subrogation or to exercise any of its powers to carry out any of its duties

32 or responsibilities, the attorney general may initiate legal proceedings or intervene in legal
33 proceedings as the division's legal representative.

34 5. The division is hereby granted authority to adopt rules and regulations,
35 consistent with the provisions of sections 537.678 to 537.693, which rules and regulations
36 may govern application for and distribution of those moneys appropriated to the division
37 from the tort victims' compensation fund.

38 6. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo,
39 that is created under the authority delegated in subsection 5 of this section shall become
40 effective only if it complies with and is subject to all of the provisions of chapter 536,
41 RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are
42 nonseverable and if any of the powers vested with the general assembly pursuant to
43 chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule
44 are subsequently held unconstitutional, then the grant of rulemaking authority and any
45 rule proposed or adopted after August 28, 2001, shall be invalid and void.